United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 2 Special Calendar
January Term 1907

No. 1736.

No. 20, SPECIAL CALENDAR.

UNITED STATES OF AMERICA *EX RELATIONE* THOMAS E. SMITHSON, APPELLANT,

vs.

SNOWDEN ASHFORD, HENRY B. F. MACFARLAND, HENRY L. WEST, AND JOHN BIDDLE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1906.

In the Court of Appeals of the District of Columbia.

No. 1736.

U. S. OF A. *ex Rel.* THOMAS E. SMITHSON, Appellant,
vs.
SNOWDEN ASHFORD ET AL.

Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES OF AMERICA *ex Relatione* THOMAS E. SMITHSON, Plaintiff,
vs.
SNOWDEN ASHFORD, HENRY B. F. MACFARLAND, HENRY L. WEST, JOHN BIDDLE, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

Petition for Writ of Mandamus.

Filed December 28, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES OF AMERICA *ex Relatione* THOMAS E. SMITHSON, Plaintiff,
vs.
SNOWDEN ASHFORD, HENRY B. F. MACFARLAND, HENRY L. WEST, JOHN BIDDLE, Defendants.

To the Supreme Court of the District of Columbia, holding a circuit court for said District, petitioner shows:—

First. That he is now, and was on the 19th day of July, 1905, and for a long time prior thereto had been, the owner, in fee simple, of the following described real estate, situate in the City of Wash-

ington, District of Columbia, to wit:—All those certain lots an parcels of land, situate as aforesaid, known as and being lots nun bered eighty-seven (87) to ninety-two (92), both inclusive, i Thomas E. Smithson and others' subdivision of all of original l numbered sixteen (16), and part of original lot numbered seve teen (17), in square numbered ten hundred and ten (1010), as sa subdivision is recorded in Book No. 30, page 103, one of the recor of the Surveyor's Office of said District; that said lots are vaca and unimproved; that the said Snowden Ashford is a citize
2 of the United States and a resident of the District of Colun bia; that he is now, and was at the date aforesaid and for long time prior thereto, had been Building Inspector for the Di trict of Columbia, duly appointed and qualified, and acting as suc that as such inspector, as aforesaid, it became and was his duty grant and issue to all persons applying therefor, permits to buil on the applicants complying with all the lawful building reg lations in force in said District, at the time of making such appl cation. That the defendants, Henry B. F. MacFarland, Hen L. West and John Biddle, are likewise citizens of the United Stat and residents of said District, and were on the day and date aforesai and now are the Commissioners of the District of Columbia, du appointed and qualified, and acting as such. That the relato desiring to improve said lots, caused plans to be prepared a drawn by N. R. Grimm, a competent architect, for the constructi and erection of six brick dwellings on said lots, one house on ea lot, covering the full width thereof; that said plans were draw in strict conformity to the requirements of the building regulatio in force in said District, save as to the thickness of the division party walls between said houses. The party walls up to the first flo joists were of the thickness of thirteen inches, and from the low part of said first floor joists, through the entire height of said wa were of the thickness of nine inches; which said plans are filed he with marked "Relator's Exhibits Nos. 1, 2, 3 & 4," and are pray to be inspected and considered in connection with this applicati for mandamus, and the hearing upon this petition. Th
3 said relator tendered himself ready to pay the fees requir by law at the time of making application for said perm as aforesaid; that said respondent, as such superintendent, as afo said, declined to grant said application, and to issue said perm because said division or party wall, as described in said plans, we above the footings, nine inches, instead of thirteen inches in thic ness, and for no other reason. That thereupon your relator appeal from the decision of said Superintendent, declining to issue a pe mit to him, as aforesaid, to the defendants, the Commissioners the District of Columbia, pursuant to an order passed by them, wit, of May 2nd, 1905, and published in the Washington Po in its issue of May 5th, 1905, reserving to themselves the right a power to grant, refuse or modify any permit applied for under t Building Regulations of the District of Columbia; a copy of whi order is filed herewith marked "Relator's Exhibit No. 5," and

rayed to be read and considered in connection with said application nd hearing. That the defendants, the said Commissioners of the istrict of Columbia, approved the decision of the Inspector of uildings, in not issuing a permit to relator, and declined to issue ne themselves, or to direct the same to be issued. Your petitioner, eing so advised, avers that said pretended order of May 2nd, 1905, promulgated by said Commissioners, as aforesaid, is not a build- ng regulation; is an order in excess of the authority vested in them y law to make or enforce; that the Inspector of Buildings, when uly appointed and qualified, has the sole lawful right and authority to issue permits to build in the District of Columbia, and that said regulation of said Commissioners, is void, and of no effect in law.

Second. That the Commissioners of the District of Columbia, under ne power vested in them by a certain act of Congress, approved June 4, 1878, did, on or about March 1, 1902, promulgate and cause be compiled, certain building regulations, among others, a regu- tion providing that where the average height of a building was irty-five feet, or less, and the width of the building, less than venty-five feet, that the basement or cellar wall should be thirteen ches in thickness, and that the thickness of the walls of the rst, second and third floors, should be nine inches. This regulation pplied to party or division walls, as well as to exterior walls. It is nown as Section 57, of the regulations promulgated by the Com- issio*b*ers of the District of Columbia, governing the erection, re- oval, repair, and maintenance of buildings in the District of olumbia, published under their authority and direction; and the lator hereby asks leave to read so much of said section as may be aterial, at the hearing of this petition. That thereafter, to wit, on e ninth day of May, 1903, the said Commissioners, assuming to t under the power conferred upon them by said Act of Congress, as oresaid, made and promulgated the following amendment to said ction of said building regulations, to wit:—

"Section 57 of the Building Regulations of the District of Colum- a, made and promulgated March 1, 1902, is hereby amended to ad as follows:

"No party wall shall be constructed in the District of Columbia less thickness throughout than a brick and-a-half, or 13 inches. two-story building may be constructed with external walls, other an party wall, thirteen inches in the basement or foundations, and nine inches in the first and second stories."

Petitioner avers that that part of said amendment to said regulation, requiring the thickness of the division or party alls to be thirteen instead of nine inches, is unnecessary, unrea- nable and void; that it unnecessarily restricts petitioner in the e and enjoyment of his property, and is in effect a taking thereof, thout due process of law. Petitioner further avers that said re- irement is not necessary to safety in the construction of the dwel- ng sought to be erected by him, but is, as to such dwellings, and all hers of a similar character, an arbitrary and unnecessary require- ent, unnecessarily increasing the cost of constructing said build-

ings; that for many years prior to the adoption of said regulatio
to wit, from the time of the laying out of the federal city, until th
adoption of said amendment, the building regulations then in for
permitted the erection of dwellings such as is sought to be erecte
by petitioner; and many such dwellings were erected and are sti
standing and occupied and are safe habitations; that the nine inc
party wall affords sufficient strength and stability for a buildin
of two stories, such as relator desires to erect.

Third. The relator further avers that he cannot proceed in th
erection of said dwellings, without a permit so to do having bee
first obtained from the respondent, the Inspector of Buildings f
said District, or from the Commissioners of the District of Columbi
in the event the regulation passed by them on the second day of Ma
1905, be held to be a valid regulation, without incurring li
6 bility to arrest by the police of said District. Your relat
charges that said amendment to said regulation, abo
quoted, is, in effect, an attempt to hinder, and prevent citizens ow
ing property in the District of Columbia, from making improv
ments upon and using and enjoying their property, with the freedo
and to the extent guaranteed to them by the Constitution of th
United States, and the law of the land. The relator, having co
plied with, and tendered himself ready to comply with all th
building regulations in force, as aforesaid, and all the valid laws a
requirements in the premises, it became and was the plain duty
the respondent, the Inspector of Buildings, or the respondents, t
Commissioners of the District of Columbia, as to which they had
discretion in law, to issue unto him a permit to erect said dwelling
and to withdraw their objection to the erection of the same, upon t
payment by the relator of the lawful fees in such case made and pr
vided, which, as hereinbefore stated, were tendered, and which
lator now tenders himself ready and willing to pay at any tim
Your relator further avers that he will be irreparably injured in t
premises, by the refusal of respondents to allow said work to be u
dertaken and completed, and that he is without remedy to comp
them to withdraw their opposition, except by resort to the court f
extraordinary relief and mandamus.

Wherefore petitioner prays that the writ of mandamus may iss
to the respondents, Snowden Ashford, Inspector of Buildings for sa
District of Columbia, or the said Commissioners of the District
Columbia, if the court shall decide that the order promu
7 gated by them on the second day of May, 1905, as aforesa
be a valid order, commanding him or them to issue, or cau
to be issued to relator, a permit to erect said dwelling houses, up
payment of the required fees therefor.

THOMAS E. SMITHSON.

B. F. LEIGHTON,
Attorney for Relator.

DISTRICT OF COLUMBIA, *To wit:*

I, Thomas E. Smithson, being first duly sworn, on oath say that
have read the foregoing petition by me subscribed, and know th

contents thereof; that the facts therein stated of my own knowledge are true, and those stated upon information and belief, I believe to be true.

THOMAS E. SMITHSON.

Subscribed and sworn to before me, this 27 day of December, 1905.

C. CLINTON JAMES,
Notary Public, D. C.

[NOTARIAL SEAL.]

8 RELATOR'S EXHIBIT No. 5.

Filed December 28, 1905.

Executive Office, Commissioners of the District of Columbia.

WASHINGTON, *May* 2, 1905.

Ordered:

That the last two sentences in the first paragraph of section 23 of the Building Regulations of the District of Columbia are hereby stricken out and the following inserted in lieu thereof:

"When such application, plans and specifications conform to these regulations the Inspector of Buildings shall, subject to the revisory power of the Commissioners, issue a permit on such application, and shall apply to such plans and specifications the official stamp, stating that the plans and specifications to which the same has been applied comply with the terms of these regulations. The plans and specifications so stamped shall then be returned to such applicant. The Commissioners, however, expressly reserve to themselves the right and power to finally grant, refuse, or modify any permit applied for under these regulations."

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JOHN BIDDLE,
Commissioners, D. C.

Published in Washington Post May 5, 1905.

Memorandum.

NOTE.—There was filed with the petition, the plans of the houses mentioned therein, marked "Exhibits Nos. 1, 2, 3 and 4."

10 *Rule to Show Cause Against Defendants.*

Issued December 28, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES OF AMERICA *ex Relatione* THOMAS E. SMITHSON
vs.
SNOWDEN ASHFORD, HENRY B. F. MACFARLAND, HENRY L. WEST, JOHN BIDDLE.

Upon consideration of the petition in the above entitled cause, filed herein on the 28th day of December, 1905, it is this 28th day of December, 1905, ordered that the respondents, Snowden Ashford, Building Inspector for the District of Columbia, and Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners for said District, show cause, if any they have, on the 12th day of January, 1906, at ten o'clock A. M., why the writ of mandamus should not issue as in said petition pray-; provided a copy of this order, and of said petition be served upon the said Snowden Ashford, Inspector of Buildings for said District, and upon the said Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners for said District, as aforesaid, on or before the 2d day of said month and year.

By the Court:

JOB BARNARD, *Justice.*

11 *Marshal's Return.*

Served copy of within Rule and copy of the Petition in this cause on Snowden Ashford, Building Inspector for the District of Columbia, and on John Biddle one of the Commissioners of the District of Columbia, Dec. 28, 1905.

AULICK PALMER, *Marshal.*
B.

Defendants' Answer.

Filed January 30, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES OF AMERICA *ex Rel.* THOMAS E. SMITHSON, Plaintiff,
vs.
SNOWDEN ASHFORD, HENRY B. F. MACFARLAND, ET AL., Defendants.

To the supreme court of the District of Columbia:

The Answer of Snowden Ashford, Henry B. F. Macfarland, Henry L. West, and John Biddle, the defendants in the above-enti-

tled cause to the petition filed herein respectfully shows to the Court.

1. These defendants do not know of and therefore do not admit the ownership in fee simple by the petitioner of the property mentioned in the first paragraph of said petition.

12 The defendant, Snowden Ashford, admits that he is a citizen of the United States, a resident of the District of Columbia, and that he was on the 19th day of July, 1905, and has since continued to be Building Inspector for the District of Columbia, duly appointed and qualified.

The other defendants admit that they are citizens of the United States residing in the District of Columbia, and that they were and are now Commissioners of said District as alleged.

This defendant, Ashford, further answering said paragraph says it only became and was his duty to grant and issue to all persons applying therefor permits to build subject to the supervision and control of the Commissioners of the District of Columbia, in accordance with amendment passed May 2, 1905, to Section 23 of the Building Regulations, which provides, among other things:

"The Commissioners, however, expressly reserve to themselves the right and power to finally grant, refuse or modify any permit applied for under these regulations."

This defendant Ashford admits that the relator desired to improve the lots mentioned in said paragraph by the construction and erection of six brick dwellings thereon, one house on each lot, covering the full width thereof. This defendant further admits that the said proposed construction of said houses did not conform to the said building regulations as to thickness of division or party walls between said houses, because the same as described by the plans submitted and as requested in the application for permit were above the first floor joists nine inches, instead of thirteen inches in

13 thickness; and this defendant further admits that according to the said plans and application the party walls up to the first floor joists were of the thickness of thirteen inches and from the lower part of the first floor joists through the entire height of said wall were of the thickness of nine inches. This defendant admits that the relator tendered himself ready to pay the fees required by law at the time of making the application for said permit, and that this defendant declined to grant said application, because said division or party wall as described in said plans were above the footings, nine inches, instead of thirteen inches in thickness, but this defendant says that his said action was and is subject as aforesaid to the said amendment to Section 23, of the Building Regulations, which amendment reads as follows:

"Ordered:

"That the last two sentences in the first paragraph of Section 23 of the Building Regulations be hereby stricken out and the following inserted in lieu thereof:

"When such application, plans, and specifications conform to these regulations the Inspector of Buildings shall, subject to the revisory power of the Commissioners, issue a permit on such application and shall apply to such plans and specifications the official

stamp, stating that the plans and specifications to which the same has been applied comply with the terms of these regulations. The plans and specifications so stamped shall then be returned to such applicant, the Commissioners, however, expressly reserve to themselves the right and power to finally grant, refuse or modify any permit applied for under these regulations."

The said Commissioners admit that the said appeal of the relator was made to them and that they approved the said decision and declined to issue or allow the said permit to be issued.

The other matters averred in said paragraph and not answered are, as they are advised, matters of law, which they are not required to answer.

14

2. Answering the second paragraph of said petition, these defendants say that on or about the 29th day of June, 1791, the original proprietors of the greater part of the lands which now constitute the city of Washington conveyed them in trust, by deeds duly executed to the Commissioners, Thomas Beall of George-, and John M. Gantt, for certain purposes and upon certain conditions; and, among others, that the property conveyed should be subject "to such terms and conditions as shall be thought reasonable by the President, for the time being, for regulating the materials and manner of the buildings and improvements on the lots, generally in said city, or in particular streets, or parts thereof, for common convenience, safety and order." All the residue of the lands lying within the bounds of the city were, by an Act of the Legislature of Maryland passed on or about the 19th day of December, 1781, vested in the same trustees, and subjected to the same trusts. Under the provisions contained in the deeds mentioned, and in the Act of the Legislature of Maryland, on the 17th day of October, 1791, the President of the United States, Gen. George Washington, at that time established certain rules and regulations for the materials and manner of the buildings and improvements on the lots in the city of Washington. These regulations were continued, with modifications, from time to time, by other Presidents, until Congress passed the Act entitled "An Act to incorporate the inhabitants of the City of Washington, and to repeal all acts heretofore passed for that purpose," approved May 15, 1820. By this Act of Congress the Corporation of Washington is vested with full power and authority "to regulate, with the approbation of the President of the United States, the manner of erecting and the materials to be used in the erection of houses." (Webb's Digest p. 56.)

15

The third regulation made by President Washington is as follows:

"The wall of no house to be higher than forty feet to the roof in any part of the city; nor shall any be lower than thirty five feet on any of the avenues" (Webb's D. 57).

This regulation was suspended by Gen. Washington on the 25th day of June, 1796, until the first Monday in December, 1900, by order which recited:

"Whereas, by the first article of the terms and conditions declared by the President of the United States, on the seventeenth day of October, seventeen hundred and ninety-one, for regulating the m

erials and manner of buildings and improvements on the lots in he city of Washington, it is provided, 'that the outer and party walls of all the houses in the said city shall be built of brick or tone,' and by the third article of the same terms and conditions it s declared 'that the wall of no house shall be higher than forty feet o the roof, in any part of the city, nor shall any be lower than hirty-five feet on any of the avenues.' And whereas the above-recited rticles have been found, by experience, to impede the settlement n the city of mechanics and others whose circumstances do not dmit of erecting houses of the description authorized by said regu- ations, it is, therefore, declared that the operation of the said first nd third articles above recited shall be, and the same is hereby, uspended until the first Monday of December, in the year one housand eight hundred, and that all the houses which shall be rected in the said City of Washington prior to the first Monday in December, one thousand eight hundred, conformable in other re- pects, to the regulations aforesaid, shall be considered as lawfully rected; except that no wooded house, covering more than three hundred and twenty square feet, or higher than twelve feet 6 from sill to the eave, shall be erected, nor shall any such house be placed within twenty-four feet of a brick or stone ouse.

"Given under my hand the 25th day of June, in the year one housand seven hundred and ninety-six.

GEORGE WASHINGTON."

By another order, which recited that said Article had been found o impede the improvement of the city, President Munroe on Janu- ry 14, 1818, suspended the operation of the third article above nentioned until the 1st day of January, 1820. This order further ecited that "the benefit of such suspensions having been experi- nced, it is deemed proper to revive and continue the same," &c.

These defendant- further answering say that Congress by Act ap- roved June 14, 1878, (20 Stats. 131) authorized the Commission- rs of the District of Columbia to make and enforce such building egulations for the District of Columbia as they might deem ad- isable, and that the regulations so made should have the same force nd effect within the District as if enacted by Congress. That rior to the 10th day of July, 1903, Section 57 of the Building Regulations of this District provided that where the height of the oof of any building was thirty-five feet or less and the building ess than twenty-five feet wide that the basement or cellar walls hould be thirteen inches, and in the first, second and third stories he thickness of the walls should be nine *walls,* the said Section 57 n the first day of March, 1902, read as follows:

"SEC. 57. The thickness of enclosing walls of first and second lass buildings and certain walls of first class buildings shall be nade in accordance with the following table, subject to the pro- isions of section 56. Walls below grade to be increased in thick- ess according to section 49."

17 That on the 9th day of June, 1903, the Commissioner made and promulgated the following Regulation, viz:

"Section 57 of the Building Regulations of the District of Columbia, made and promulgated March first, 1902, is hereby amended to read as follows:

"No party wall shall be constructed in the District of Columbia of less thickness throughout than a brick and a half, or thirteen inches. A two story building may be constructed with external walls, other than party walls, thirteen inches in the basement or foundations and nine inches in the first and second stories.

"For buildings more than two stories in height the external and party walls shall be at least thirteen inches thick and otherwise in accordance with the schedule embraced in this section. Hereafter fire walls shall be constructed by bringing up the walls at least one foot higher than the contiguous portions of the roof throughout the entire extent of the roof, including mansards. No fire wall shall exceed four feet in height above the roof, and must be built of hard brick in cement mortar and flashed over or capped with non-combustible coping."

These defendants are advised, and therefore aver, that the said section 57, as promulgated on the said 9th day of June, 1903, as aforesaid, was within the power of the Commissioners of the District of Columbia to make, and that as matter of law it cannot be said that the said regulation is in any respect unnecessary, unreasonable and void.

They further say that there is no limitation as to the character or extent of the regulations thus authorized, and the terms are broad enough to include every form of building regulations that the Commissioners may deem advisable, and which may reasonably be construed as the proper subject of regulation.

These defendants further answering deny that either as matter of fact or law the said regulation deprives the plaintiff of the

18 enjoyment of his property or that it takes the petitioner's property without due process of law; and say the additional expense of compliance with the regulation over the insecure and unreliable nine-inch wall in this particular case will not amount to more than $75.00 per house. Defendants state that the said requirement is necessary to the safety in the construction of the dwellings desired to be erected by the petitioner, and is not as to said dwellings and others of similar character arbitrary and unnecessary, nor does the same unduly and unnecessarily increase the cost of said dwellings; they deny that many nine-inch walls have been built in the past and are standing in good condition to-day and they say that said nine-inch walls found in good condition are an exception to the general rule, and that many nine-inch walls built in the past have been recently condemned and rebuilt, because they were unsafe and insecure. They say that the fact that there are dwellings which have stood for a considerable length of time having nine-inch walls within the said city of Washington does not show, and is wholly unreliable as evidence of the strength, stability and safety of construction as against loss and damage by

fire and safety to the people and inhabitants of the city of Washington. That the inadequacy of such nine-inch walls as those desired to be erected by the relator was shown in the fire which occurred on the 20th day of December, 1905, at 9th street and Louisiana Avenue, northwest, by the fact that all the nine-inch walls to the several buildings burned at said fire were destroyed while the thirteen inch walls of burned buildings having the same were left standing.

19 These defendants consider the said amended regulation known as section 57, not only reasonable but essential to a safe and secure structure. The defendant Ashford says that the very design of a nine-inch wall is opposed to the best results in *statical* and scientific construction; the center of gravity passing vertically between the inner and outer layers of brick, depends on headings or bonding courses every five courses apart to distribute the weight and to transmit the same in a uniform manner to the bottom or foundation of the wall. In the thirteen inch wall the same line passes down through the center of the middle layer of brick transmitting the weight through over-lapped headers giving a uniform compression to the entire wall resulting in an increased stability; that where nine-inch walls are used for party-walls, at each floor they are honey-combed with holes for joists to such an extent that all bonding both vertical and horizontal is practically destroyed and thus the wall becomes simply a succession of panels at each story without the co-ordination necessary to secure stable construction.

That an exterior party-wall, while not affected by perforations for joists to the same extent as an interior wall, in nine cases out of ten, is faced with brick which are different in thickness to those used for backing, rendering the same liable to unequal settlement, because of the difference in sizes of the the mortar joints in the two layers of bricks; that it is a well-known fact that all mortar compresses to a certain extent, but its exact percentage has never been determined, and experiments are too uncertain to be

20 relied upon in actual practice; that in many cases nine inch walls are buckled in the center by the manner in which the joists are laid upon the walls, and used by the workmen as a gangway during the preliminary work in setting each tier.

That the sagging of the joists sometimes causes a separation of the inner and outer layers of brick at the top of the walls causing serious defects, which could properly be remedied only by taking down and rebuilding that portion of the wall, but that this is very seldom done. That the thirteen inch wall, because of its increased weight and better bonding, is not as susceptible to the defective conditions just mentioned. The wisdom of considering chimneys in party walls as taking the place of cross walls or buttress is extremely doubtful. That, in fact, practical experience teaches that such chimneys instead of adding any element of strength to the walls in which they are built, have had just the opposite effect, and have been a fruitful cause of buckling and bulging of walls. That this is in a great measure due to the irregular manner in which it is

necessary to lay bricks in corbelling over in the interior of the chimneys to form the flues and provide for fire places at each story. That very often a flue is carried over in this manner across a 5′ 0″ chimney breast, this corbelling being supported from the wall and from the breast of the chimney itself. That a glance of a sectional plan of chimney will make this plain to anyone of average intelligence, and if necessary the cracks in plastering in chimney angles may be noted as further evidence of the unreliability of chimneys as supports for walls. That the nine inch wall is especially susceptible to damage from conditions that ordi-
21 narily prevail during the construction of a building, such as the vibration caused by the dumping of material on the scaffold, when, as is very often the case, some of the scaffold rests upon or against the wall or perhaps a brick spall has become wedged between the edge of the scaffold and the wall, and at each visit of the laborers the impact of dumping material converts the spall into a lever forcing the wall from its proper bearing and perhaps causes serious fracture to the same. But it is claimed, look at the number of nine inch walls standing and that have stood for years, of greater height and depth than the present regulations permit. The fact is admitted, but a closer observation of these long standing walls will demonstrate the fact that in a good many instances they are affected by bulging or buckling or other defects above-mentioned, unless re-inforced on the interior by cross-walls or partitions. Defendants further answering say they might go further and state that in the city of Baltimore there are standing hundreds of walls only four inches thick, which only goes to show how inadequately the public were protected against danger to limb in times gone by.

Further answering these defendants say that their refusal to issue a permit to petitioner for construction of said building for nine inch party walls was on the ground that the plans could not be approved by Section 23 of the Building Regulations for the reason that the said walls did not conform to the requirements of said Section 57 as amended.

3. These defendants admit that the relator cannot proceed
22 in the erection of said buildings without permit so to do, as alleged, and the defendant Ashford does not admit that he has sole control over said permit, and he says that under the aforesaid section 23, as amended, the Commissioners have supervisory power over all applications for permits, and they have the right and power to finally grant, refuse or modify any permit.

These defendants further deny that any constitutional question is involved in this case. Respecting the charge that the said amendment to said regulation, above-quoted, is in effect an attempt to hinder and prevent citizens owning property in the District of Columbia from making improvements upon it and using and enjoying their property with the freedom and to the extent guaranteed to them by the Constitution of the United States, and the law of the land, these defendants say that such allegations contain matters of law, which they are advised is unnecessary for them to answer.

These defendants further answering say that it did not become or was it their duty, as to which they had no discretion in law, to issue to said petitioner a permit to erect said buildings, nor was it incumbent upon these defendants to withdraw their objections to the granting of a permit to the petitioner upon the payment by the relator of the lawful fees in such cases made and provided, and these defendants deny that the petitioner will be irreparably or otherwise injured in the premises by the said refusal of these defendants to allow said work to be undertaken and completed; on the contrary, these defendants say that the action of the said
23 petitioner in attempting to erect said structures, as aforesaid, for human habitation without providing, as required by said Section 57 of the Building Regulations, for the security and safety of the said buildings, both as to structure and against fire, is wholly selfish, and that the petitioner could well afford to pay the small additional expense to make the necessary thickness of the walls conform to the said regulation, and thus secure the erection of substantial and safe structures to the benefit of himself and the whole community.

This defendant Ashford is further advised, and so charged, that he is not the proper party to be proceeded against in this matter, and that the Commissioners of the District of Columbia are the only proper parties to this proceeding, and he prays the same benefit of this exception as though he had demurred to said petition.

And having fully answered, these defendants pray to be hence dismissed with their costs.

SNOWDEN ASHFORD.
HENRY B. F. MACFARLAND.
HENRY L. WEST.
JOHN BIDDLE.

E. H. THOMAS,
Attorney for Defendants.

DISTRICT OF COLUMBIA, *ss:*

We, Snowden Ashford, Henry B. F. Macfarland, Henry L. West and John Biddle, defendants in the above-entitled cause, being first duly sworn, upon their several oaths say, that they, and each of them, have read the foregoing answer by them subscribed and know
24 the contents thereof that the facts therein stated upon their own knowledge are true and those stated on information and belief they believe to be true.

SNOWDEN ASHFORD.
HENRY B. F. MACFARLAND.
HENRY L. WEST.
JOHN BIDDLE.

Subscribed and sworn to before me this 26th day of January, A. D. 1906.

[SEAL.]

WILLIAM TINDALL,
Notary Public, D. C.

Relator's Motion to Strike Out Certain Parts of Answer.

Filed February 26, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES OF AMERICA *ex Relatione* THOMAS E. SMITHSON
Plaintiff,
vs.
SNOWDEN ASHFORD, HENRY B. F. MACFARLAND ET AL., Defendant

Comes now the relator, by B. F. Leighton, Esq., his attorney, an moves the Court to strike out the following parts of defendants' an swer to relator's petition, to-wit:—

First: All that part of the second paragraph of said answer, com mencing on the third page thereof, with the words "on or about th 29th. day of June 1791," and ending with the following sen
25 tence, on the fifth page of said answer, to wit:—"This orde further recited that "the benefit of such suspensions havin been experienced, it is deemed proper to revive and continue th same," &c. The whole of said part of said answer, moved to b omitted, as aforesaid, reading as follows:—

"On or about the 29th. day of June, 1791, the original proprieto of the greater part of the lands which now constitute the city o Washington conveyed them in trust, by deeds duly executed to th Commissioners, Thomas Beall, of George and John M. Gantt, fo certain purposes, and upon certain conditions; and, among other that the property conveyed should be subject "to such terms an conditions as shall be thought reasonable by the President, for th time being, for regulating the materials and manner of the build ings and improvements on the lots, generally in said city, or in part cular streets or parts thereof, for common convenience, safety an order." All residue of the lands lying within the bounds of th city were, by an Act of the Legislature of Maryland, passed on o about the 19th. day of December, 1792, vested in the same trustee and subjected to the same trusts. Under the provisions containe in the deeds mentioned, and in the Act of the Legislature of Mary land, on the 17th. day of October, 1791, the President of the Unite States, Gen. George Washington, at that time established certai rules and regulations for the materials and manner of the building and improvements on the lots in the city of Washingto
26 These regulations were continued, with modifications, fro time to time, by other Presidents, until Congress passed th Act entitled "An Act to incorporate the inhabitants of the City o Washington, and to repeal all acts heretofore passed for that pu pose," approved May 15, 1820. By this Act of Congress, the Corpor tion of Washington is vested with full power and authority "t regulate, with the approbation of the President of the United State

he manner of erecting and the materials to be used in the erection of houses." (Webb's Digest, p. 56.) See Organic Act, June 11, 1878, creating the present form of Government.

The third regulation made by President Washington is as follows: "The wall of no houses to be higher than forty feet to the roof, in any part of the city; nor shall there be any lower than thirty-five feet on any of the avenues."

This regulation was suspended by Gen. Washington on the 25th. day of June, 1796, until the first Monday in December, 1800, by order which recites:

"Whereas, by the first article of the terms and conditions declared by the President of the United States, on the seventeenth day of October, seventeen hundred and ninety-one, for regulating the materials and manner of buildings and improvements on the lots in the city of Washington, it is provided, "that the outer and party walls of all the houses in the said city shall be built of brick or stone," and by the third article of the same terms and conditions it is declared "that the wall of no house shall be higher than forty feet to the roof, in any part of the city, nor shall any be lower than thirty-five feet on any of the avenues." And whereas the above-recited articles have been found, by experience, to impede the settlement in the city of mechanics and other whose circumstances do not admit of erecting houses of the description authorized by said regulations, it is therefore declared that the operation of the said first and third articles above recited, shall be, and the same is hereby, suspended until the first Monday of December, in the year one thousand, eight hundred, and that all houses which shall be erected in the city of Washington, prior to the first Monday in December, one thousand eight hundred, conformable in other respects to the regulations aforesaid, shall be considered as lawfully erected; except that no wooden house, covering more than three hundred and twenty square feet, or higher than twelve feet from wall to the eave, shall be erected, nor shall any such house be placed within twenty-four feet of a brick or stone house.

Given under my hand the 25th. day of June, in the year one thousand seven hundred and ninety-six.

GEORGE WASHINGTON."

By another order, which recited that said Article had been found to impede the improvement of the city, President Monroe, on January 14, 1818, suspended the operations of the third article above mentioned until the first day of January 1820.

This order further recited that "the benefit of such suspensions having been experienced, it is deemed proper to revive and continue the same," &c.

Second: And also, all of those sentences on the eighth page of said answer, which are in the following language, to wit:—

"They say that the fact that there are dwellings which have stood for a considerable length of time, having nine inch walls within the said city of Washington, does not show and is wholly unreliable as the evidence of the strength, stability and safety of construction as

against loss and damage by fire and safety to the people and inhab
tants of the city of Washington. That the inadequacy of such nin
inch walls as those desired to be erected by the relator was show
in the fire which occurred on the 20th of December, 1905, at 9th
Street and Louisiana Avenue, northwest, by the fact that all of th
nine-inch walls to the several buildings burned at said fire were de
stroyed, while the thirteen inch walls of burned buildings havin
the same were left standing."

Third: Also all that part of defendants' answer, commencing o
the eighth page thereof, at the words "The defendant Ashford say
that the very design of a nine-inch wall," and continuing to the clos
of the sentence of the eleventh page of said answer, whic
29 ends with the following language: "which only goes to sho
how inadequately the public were protected against dange
to limb in times gone by." The whole of said part of said answe
reading as follows:—

"The defendant Ashford says that the very design of a nine-inc
wall is opposed to the best results in statical and scientific con
struction; the center of gravity passing vertically between the inne
and outer layers of brick depends on headings or bonding course
every five courses apart to distribute the weight and to transmit th
same in a uniform manner to the bottom or foundation of the wal
In the thirteen inch wall, the same line passes down through th
center of the middle layer of brick transmitting the weight throug
overlapping headers giving uniform compression to the entire wal
resulting in an increased stability; that where nine-inch walls a
used for party walls, at each floor they are honey-combed with hol
for joists to such an extent that all bonding both vertical and hor
zontal is practically destroyed and thus the wall becomes simply
succession of panels at each story, without the co-ordination nece
sary to secure stable construction.

That an exterior party-wall, while not affected by perforation f
joists to the same extent as an interior wall, in nine cases out of te
is faced with brick which are different in thickness to those used f
backing, rendering the same liable to unequal settlemen
30 because of the difference in sizes of the mortar joints in th
two layers of bricks; that it is a well known fact that a
mortar compresses to a certain extent, but its exact percentage h
never been determined, and experiments are too uncertain to be r
lied upon in actual practice; that in many cases nine-inch walls a
buckled in the center by the manner in which the joists are laid upo
the walls, and used by the workmen as a gang way during the pr
liminary work in setting each tier.

That the sagging of the joists sometimes causes a separation of th
inner and outer layers of brick at the top of the walls causing s
rious defects, which could properly be remedied only by taking dow
and rebuilding that portion of the wall, but that this is very seldo
done. That the thirteen inch wall, because of its increased weigh
and better bonding, is not as susceptible to the defective condition
just mentioned. The wisdom of considering chimneys in part

valls take the place of cross walls or buttress is extremely doubtful. That, in fact, practical experience teaches that such chimneys instead of adding any element of strength to the walls in which they re built, have had just the opposite effect, and have been a fruitful ause of buckling and bulging of walls. That this is in a great neasure due to the irregular manner in which it is necessary to lay ricks in corbelling over in the interior of the chimneys to form the flues and provide for fireplaces at each story.

1 That very often a flue is carried over in this manner across a 5′ 0″ chimney breast, this corbelling being supported rom the wall and from the breast of the chimney itself. That a lance of a sectional plan of chimney will make this plain to anyone f average intelligence, and if necessary the cracks in plastering in himney angles may be noted as further evidence of the unreliability f chimneys as supports for walls. That the nine-inch wall is espeially susceptible to damage from conditions that ordinarily prevail uring the construction of a building, such as the vibration caused y the dumping of material on the scaffold, when, as is very often ne case, some of the scaffold rests upon or against the wall or perhaps a brick spall has become wedged between the edge of the scaffold nd the wall, and at each visit of the laborers, the impact of dumpng material converts the spall into a lever forcing the wall from its roper bearing, and perhaps causes serious fracture to the same. ut it is claimed, look at the number of nine inch walls standing, nd that have stood for years, of greater height and depth than the resent regulations permit. The fact is admitted, but a closer obervance of these long standing walls will demonstrate the fact that n a good many instances they are affected by bulging or buckling, r other defects above-mentioned, unless re-inforced on the interior y cross walls or partitions. Defendants further answering say they might go further and state that in the City of Balitmore,

2 there are standing hundreds of walls only four inches thick, which only goes to show how inadequately the public were rotected against danger to limb in times gone by."

Because relator says,

First. That the matters and things stated in said parts of said nswer are irrelevant, and not properly responsive to the averments n said petition, and

Second. The matters therein stated are properly matters of evience, and are not properly pleadable by way of answer; and

Third. The matters and things in said answer objected, are argumentative in character, and not proper statement of facts; and

Fourth. Because of other errors and imperfections in said parts f said answer, appearing on the face thereof.

B. F. LEIGHTON,
Attorney for Plaintiff.

Please take notice that I will call the above motion to the attenion of Justice Barnard, Criminal Court No. 2, on Friday, March nd, 1906, at ten o'clock A. M., or as soon thereafter as counsel may e heard; or if any reason said motion cannot be heard before said

Justice, then before any one of the Justices holding the circuit cour
to which said motion may be assigned.

B. F. LEIGHTON,
Attorney for Relator.

To E. H. Thomas, Esq., Attorney for defendants.

33 *Order Denying Motion to Strike Out.*

Filed March 23, 1906.

In the Supreme Court of the District of Columbia.

At Law. 48203.

U. S. *ex Rel.* SMITHSON
v.
ASHFORD ET AL.

Upon hearing the motion to strike out portions of the return file
by the defendants herein, and the said motion having been argue
by counsel and considered by the Court:—

It is this 23d day of March, 1906, ordered that the said motio
be, and the same is hereby, overruled and denied.

JOB BARNARD, *Justice.*

Joinder of Issue.

Filed March 31, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES *ex Relatione* THOMAS E. SMITHSON
vs.
SNOWDEN ASHFORD ET AL.

Comes now the relator, by B. F. Leighton, Esq., his attorne
and joins issue with defendants on their answer to relato
34 petition.

B. F. LEIGHTON,
Attorney for Relator.

Order Dismissing Petition and Appeal Noted.

Filed June 8, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES OF AMERICA *ex Relatione* THOMAS E. SMITHSON
vs.
SNOWDEN ASHFORD ET AL., Respondents.

This cause coming on to be heard on petition of the above named relator for mandamus against the Inspector of Buildings and the Commissioners of the District of Columbia, the answer of the respondents thereto and the testimony taken before the Court was argued by counsel for the respective parties and submitted.

Thereupon, it is by the Court this 8th day of June, 1906, adjudged and ordered that the prayer of the said petitioner for mandamus be, and the same is hereby, denied, and that the rule issued on the said respondents, and the said petition of the relator be, and the same are hereby dismissed, and at the cost of the petitioner to be taxed by the clerk.

By the Court,

JOB BARNARD, *Justice.*

From this judgment, the relator in open Court appeals to the Court of Appeals of the District of Columbia, and the Court fixes One Hundred Dollars amount of penalty of the bond for costs.

JOB BARNARD, *Justice.*

Opinion.

Filed June 11, 1906.

In the Supreme Court of the District of Columbia.

No. 48203. Law.

THE UNITED STATES *ex Rel.* THOMAS E. SMITHSON
vs.
SNOWDEN ASHFORD, and the Commissioners of the District of Columbia.

In this case the relator has presented a petition, praying for a writ of mandamus to compel the respondents, the Inspector of Buildings, and the Commissioners, of this District, to issue to him a permit to build a row of six dwelling houses, to be numbered 232

to 242, on 13th street, North East, in Square 1010, in Washingto City.

The plans presented by the relator indicate that these houses a to be fifteen feet each in width, and two stories and basement i height.

The outside walls and party walls in the basement, are to b thirteen inches in thickness, but from the first floor joists all th walls are to be only nine inches in thickness.

A building regulation made by the Commissioners on May 9th 1903, provides that "no party wall shall be constructed i
36 the District of Columbia of less thickness throughout than brick and a half, or thirteen inches." This provision found in Section 57 of the Building Regulations as amended.

Because of the relator's intention to disregard this regulation to thickness of party walls, and to build this row of houses with nin inch party walls above the basement, a permit was refused by th Building Inspector.

The relator thereupon appealed to the Commissioners, and the affirmed the action of the Inspector.

He then filed his petition in this court, and in response to rule to show cause, the respondents filed an answer, in which th relator joined issue, and proof was taken as to the character, a visability, safety and durability of nine inch party walls as com pared with thirteen inch party walls, in small two story house such as described in the plans in this case.

From this testimony it appears that houses such as these, hav been constructed in the city of Washington for many years, an up to the time that the said building regulation was so amende as to require all party walls to be thirteen inches; and many suc houses are still standing. Before that time, however, some ver reputable builders, in building for themselves, thought it advisab and preferable to build such party walls, thirteen inches in widt and did so build a number of houses.

There seems to be a difference of opinion among the builders whos testimony was taken, as to the necessity of having thirteen inc walls; and there is also a difference of opinion as to the be
37 method of construction of a nine inch wall, with referenc to the placing of the joists. Some contend that it is bett construction to place the joists of the two houses, the ends of whic are to rest upon the party wall, directly opposite each other; an others claim that it is better construction to "stagger" them, as it called; that is to place the joists in one house mid-way between th joists of the other house, so they will not come directly opposit each other. Which ever way the joists are laid, the wall is muc weakened by the holes left to accommodate the joists.

Some of the witnesses also maintain that a nine inch wall is no a sufficient protection against fire in an adjoining building; and tha both for safety as to construction, and safety as against fire, that th regulation is necessary.

It seems to me that the question is, not whether a nine inch part

wall is reasonably strong and safe, but whether a thirteen inch party wall is so much stronger and safer than is necessary, as to make the regulation an unreasonable interference with the rights of citizens in the use of their own property? All agree, if properly built, it is a better wall; but all do not agree that a nine inch wall is sufficient.

The regulation is clearly one pertaining to the character of the buildings to be erected in the District; and therefore if it is not an unreasonable requirement, the court would be without power to interfere, as the Commissioners are the ones entrusted with the duty of making building regulations, and not the court. (20 St. L. 131.)

38 While builders are so divided in opinion as to the necessity of a thirteen inch party wall, in all classes of houses, and as to the sufficiency of a nine inch party wall, it is difficult for the court to say that a regulation requiring a thirteen inch party wall, must, of necessity, be an unreasonable regulation. All reasonable, and practical men, do not so regard it.

Counsel have presented a number of building regulations from other cities in this country, from all of which it appears that similar walls are required by them. In the face of these, and under the testimony in this case, I am not able to conclude that the building regulation in question is so far unreasonable or unnecessary as to be void. I am therefore forced to the conclusion that the petition of the relator herein, must be dismissed, and the writ of mandamus denied.

JOB BARNARD, *Justice.*

Memoranda.

June 13, 1906.—Appeal Bond filed.
June 13, 1906.—Bill of Exceptions submitted to the Court.
July 19, 1906.—Time to file record in Court of Appeals extended to October 1, 1906.

39 *Bill of Exceptions Made Part of Record.*

Supreme Court of the District of Columbia.

TUESDAY, *August 7th,* 1906.

Session resumed Hon. Job Barnard, Justice, presiding.

No. 48203. At Law.

UNITED STATES *ex Rel.* THOMAS E. SMITHSON, Pet'r,
vs.
THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA, Defendant-.

The petitioner's Bill of Exceptions heretofore submitted herein being this day signed, it is ordered that the same be made of record, now, as of the time of the noting thereof at the trial.

40 *Bill of Exceptions.*

Filed August 7, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES *ex Rel.* THOMAS E. SMITHSON
vs.
THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

Mandamus.

Be it remembered that at the trial of this cause before the Hon Job Barnard, one of the Justices of the Supreme Court of the Distric of Columbia, without a jury, the relator in order to maintain the issu on his part joined, produced as a witness JOHN E. HEROLD, wh testified in substance as follows: that the first thing he knew abou any business was brick masonry. He commenced that about 5 or 56 years ago and continued in the business about 20 years i the active work of laying brick mason work. He built a great man houses of the character described in relator's petition. He laid brick in old times when people were poor and built small houses. He ha done more of that work than any other kind. He built or helpe to build several hundred. The walls of these houses were generall nine inches and had built division walls of four and a half inches In his opinion a wall nine inches in thickness is ample in point o strength, stability and durability for the kind of house in question Witness has a couple of houses that he built in 1856 on 6th Stree between M & N Sts. They are bigger than these houses
41 larger, more front and higher. They were about 20 fee front, main building about 30 feet in depth, cellar under it three stories high, and a division wall that divides these two house four and a half inches wide. There never has been any trouble with them from that day to this. A party wall nine inches in thickness is reasonably safe as to fire. He never has known of a fire spreading from one house to another through the wall.

The relator to further maintain the issues on his part joined produced as a witness DAVID THOMAS CISSELL, who testified a follows: that he is by occupation a brick layer and has been s occupied for forty-five years, about forty years as a contractor i brick work, and the balance of the time worked at his trade. He has built a number of houses of the kind under consideration. He thinks the number would run up into the hundreds. The walls of the houses so built were eight and a half or nine inches. He has never paid any particular attention to these houses and never had to go back and put them up again or repair them. In his judgment a nine inch wall if properly put up with proper materials is ample

o far as stability, durability and strength of the wall is concerned, nd it is reasonably safe in regard to fire if properly laid. If joists re put opposite each other they are more liable to fire. There s no necessity of putting them end to end. He thinks there is a aw against it. It does not cost any more to have the joists alter- nating, but you have to be a little more particular in placing the oists, but witness does not know that it increases the price any or requires any more lumber. It requires a little more labor in laying the brick. The cost of labor is not so much more as to make 42 any appreciable difference in the brick work of a house. As a rule you find better work in a nine inch wall than in a hirteen inch wall. There is a better chance of slighting the work n the manner of labor and also of the material as to the middle ow of brick.

On cross-examination witness stated a thirteen inch wall if prop- rly built is a better wall than a nine inch wall. With a fourteen nch wall of course you take up more room. If witness was going to ut up a house and his ground was limited a nine-inch wall would e sufficient in every respect. He thinks the cellars of all houses hould have 14-inch walls. He does not know that there is any dif- erence of opinion among architects and builders as to the stability nd durability of a 9-inch wall and its protection against fire. He as never heard the question raised. If you desire to add additional tories after your house is built it is better to have a 14-inch wall. He has built single houses with 9-inch walls. He does not know f any objection to a 9-inch party wall where it is properly built nd work properly done. His evidence is based on his own experi- nce. He would not like to go outside of that. Uniform bonding n a 9-inch wall is probable. There is no danger of sagging or buck- ing in the case of a 9-inch partition walls where used for dwelling houses, but if the building is used for a warehouse over a certain eight there would be. There may be instances where a 9-inch artition wall would be insufficient, but witness thinks it would be n account of the manner in which they are put up, in the manner n which the brick are laid, and of course the quality of the brick.

A 9-inch wall in an ordinary house of well burnt salmon brick 43 would be sufficient to carry the ordinary height of 9 or 10 feet. Flues strengthen a party wall. You can make the acking to a flue to a 9-inch party wall either 9 or 4 inches. They re usually 9. Four inches is sufficient if properly built with roper materials. There is no tendency for the *for the* weight of the lue to pull the wall over if properly built. The flue if properly built s an advantage to the wall, is a great addition, strengthens it, the nore you put in the stronger the wall, within a reasonable amount. A 13-inch wall is a stronger wall than a 9-inch wall.

Witness stated on re-direct examination that *with* a good 9-inch wall is better than a bad 14-inch wall. Unless the middle tier of rick is properly laid with a good connecting mortar the 9-inch wall s stronger. There is generally more carelessness in laying the in- ide layer than the outer. Anybody can see the outer layer but

not the inner. Witness finds it very difficult to find men that can lay the inside properly.

The relator to further maintain the issues on his part joined produced as a witness JAMES MARTIN, who being sworn testified as follows: His occupation is that of brick-layer and contractor since 1893. He started in the business and learned the brick trade in 1884 or '86, served four years and worked at the business from that time until 1893 and has been laying bricks ever since, and since the latter date has been contracting for brick work. A party wall 9 inches in thickness is adequate in durability and strength for houses such as are described in relator's petition. He cannot tell how many buildings he has constructed or worked upon of the kind
44 in controversy, but in the last 3 or 4 years he has been laying brick amounting to 7,000,000 bricks per year. He has built in the neighborhood of 70 or 80 houses within the last two or three years. He thinks such a wall is all right in regard to fire if the joists were separated and not allowed to butt one another.

On cross examination witness said he does not know of any difference of opinion among builders and architects as to the advisability of erecting a 9-inch wall in houses above the first floor in two-story houses, in rows. He speaks only of what he knows himself. By using a 9-inch party wall you save expense, less cost in the price of house to the general public, and to the poor people. When you build 4-room houses with 9-inch walls outside the fire limits and inside the fire limits in the thickly settled part of the city you have to put in a 13-inch wall and it amounts to a whole lot more money where you only get a rental of $5., $6. or $10. a month for each house. That is an injury to the general public and to the people who own property in the suburban parts. Witness sees no objection to two-story houses. He does not think there would be any danger from fire. A 13-inch wall he knows from experience is better than a 9-inch wall. He has made examinations after fires on several occasions, but never had seen where fire had gone through the wall of the house. In the houses he has built lately the party walls have been 13 inches. This was because the building regulations call for it. It is cheaper to build a 13-inch wall than to fight the building regulations. He does not consider it any disadvantage to have a 9-inch wall in a row of houses. In a two-story house 15, 16 or 18 feet wide a 9-inch wall is sufficient to carry it according to
45 the books I have looked over. Witness would not like to say anything about adding stories where there is a 9-inch party wall, but would do it if a man wanted him to. For the basement and first story of a three-story house he thinks there ought to be a 13-inch wall. He has not examined any houses except those he has built himself.

Relator to further maintain the issues on his part produced as a witness JOHN C. YOST, who testified as follows: He is by occupation a contractor and has been so occupied for 20 years, in this city all the time. He has built a great many houses of the kind under con

ideration. He has no idea how many but a great many all over he city. Before the new regulation these houses all had party walls of 9 inches. He thinks a 9-inch party wall is reasonably safe in point of strength, stability and durability and protection against ire in this class of a house.

Relator then produced GEORGE W. BARKMAN, who testified as follows: That he has been a contractor and builder for about 12 years. Before that time he was doing journey work as a carpenter. He started in 1866 to learn his trade and has worked in Washington ever since. He has built all kinds of houses. He superintended a great many houses before he went to contracting. He has built a great many 9-inch walls. The old regulations which were revised several years ago struck out 9-inch walls and inserted 13-inch walls. There are a great many houses built under the old regulations with 9-inch party walls. Such a wall in the judgment of witness is reasonably safe in point of strength, durability and stability in this grade of a house. If it is properly built it is as good as a 13-inch wall and better than some that are being built now.

On cross-examination witness testified that he never saw a fire break through the wall. It generally goes over and comes through the roof. Fires usually burn through the joists. He has seen them burn joists in two leaving the ends of the joists hanging in the walls. There never has been a fire in the house of 9-inch party wall that he has built to his knowledge. Before the regulations were amended builders as a general rule built the inside walls 8 inches thick. The thickness of the wall is immaterial to the builder. He would just as lieve build a 13-inch wall as a 9-inch wall. A 13-inch wall if properly built is a better wall. A 9-inch wall is cheaper. It takes one-third more brick for a 13-inch wall than it does for a 9-inch wall, and it narrows the house a little.

The relator to further maintain the issues on his part joined produced as a witness FRANCIS A. BLUNDON, who testified as follows: That he was a builder by occupation and has been building houses to sell for about 10 years. Before that he was a contractor building houses for other people. He learned the carpenter's trade and worked at it for 12 or 14 years before commencing to contract. All this was in the City of Washington. He thinks a 9-inch party wall is perfectly safe for houses such as are under consideration in this case, and safe against fire. He bases his judgment on his experience in building houses himself. He has built houses of similar character to the number of 3 or 400 during the past 10 years. He never has had any complaint about them. He lives himself in a house with a 9-inch partition wall.

On cross-examination witness stated that he lives in the end of a row. He has observed a very few fires in this class of houses. He cannot tell the effect of a fire on a 9-inch wall. He thinks it is cheaper to build a 9-inch party wall than a 13-inch wall.

To further maintain the issue, on his part joined relator produce as a witness GEORGE C. PUMPHREY, who testified as follows: He ha been 16 years a bricklayer in the City of Washington, and as builder worked upon something over 450 houses, mostly of 6 or rooms, two stories in height, and from 16 to 18 feet in width. H considers a 9-inch party wall between houses of that character a reasonably safe in point of strength and durability. He think there is no question about their strength.

On cross-examination he stated that he built houses in a smal way to sell for about five years. He thinks a 9-inch wall for som purposes as good as a 13-inch wall. A 9-inch wall will do all tha is required in that grade of a house. Witness cannot see that i would add anything to the strength or durability or resistance to fire He has observed other houses than his own.

To further maintain the issues on his part joined the relator pro duced as a witness THOMAS E. MELTON, who testified as follows That his occupation is that of carpenter and builder, and that he ha been so occupied for 15 years in the City of Washington. He ha built mostly 6 and 8 room houses, with a width from 12 to 20 fee two stories in height. He has built approximately 8 or 900 of thes houses in all parts of the city. Three or four hundred wit
48 a 9-inch party wall and may be 500. The majority of then were so built until the regulations were changed. He ha found during his experience that a house of the grade in questio that a 9-inch party wall is sufficient in point of strength and dura bility and protection against fire.

On cross-examination witness stated he had never seen any fires i two-story houses. He had never seen one destroyed by fire with 9-inch wall. He builds houses to sell. The regulation makes it little more expensive to build.

On re-direct examination witness said it made no difference to hi as a builder whether the law was 13 or 9 inches. The witness state that a 9-inch wall was preferable for the class of house in controversy A 9-inch wall properly built is a better wall.

On recross-examination witness stated that in a 9-inch wall yo can see what is going into it. Bricks have to be whole, while in 13-inch wall you have a chance to throw in rubbish and bats tha cannot be seen. Masons do not always do as good work and yo cannot be present all the time to oversee them. You can put poore bricks in such work where it cannot be seen and the workmanshi poorer too. You cannot prevent it.

To further maintain the issues on his part joined the relator pro duced as a witness EDGAR S. KENNEDY, who testified that his occu pation was that of a builder since 1886. He learned the carpenter trade, worked at it for about 10 years before going into the buildin business. He has been a builder since 1886. He has built mostl three-story houses. These were built with 9-inch party wal
49 up to the time the regulations required 13-inch walls. H judges he built 150 of these all together. These houses we

reasonably safe. He thinks a party wall for a house of the grade in question is safe both as to fire, strength and durability.

On cross-examination witness stated that he knows of no difference of opinion as to the advisability of a 9-inch wall for this grade of a house. He knows of no objection to a 9-inch wall in this class of a house. He does not think 13-inch wall better than a 9-inch wall for this class of a house. A 13-inch wall would be stronger. It would be very little more protection against fire. When a fire has gone so far as to communicate with adjoining houses through the joist holes the fire department would have had ample opportunity to put out the fire. He does not think a 13-inch party wall any better protection against fire than a 9-inch wall. He thinks there is practically no difference or very little if any.

On re-direct examination witness stated that he had never known of a fire originating in one two-story house and spreading through the house into an adjoining building.

Relator to further maintain the issues on his part joined testifies on his own behalf as follows: That he is a builder by trade and been so occupied for 53 years, and is now 69 years of age. He was in the brick business for 20 years building houses at the same time. He learned his trade as a carpenter. He has built 50 or 60 houses of the kind for which he has made application for permit to build. He worked on them himself. He has helped to build a great many of this grade of house. He gives his personal observation. He lived in a row of houses three stories high and they are just as good as the day they were put up. They are perfectly safe with a 9-inch party wall, from the footing up. In those days we were allowed to put up 35 feet with 9-inch walls. Most of the buildings in this city before the regulations were changed of 35 feet in height were built with 9-inch walls. 99 out of every 100 of that height were built that way. Some of them were 4-inch walls.

Upon cross-examination witness said that he lives in a row of houses where the inside walls are 9 inches in thickness, 136 11th St., N. E. These houses were built in 1886.

Relator then and there offered in evidence a deed conveying Lot 16 and part of Lot 17 in Square 1010 in fee simple to the relator; also record of the Surveyor's office showing subdivision of said original lot and part of lot into sublots 87 to 92 both inclusive, by Thomas E. Smithson, book 30, page 103, being the same property upon which relator seeks to build.

Relator to further maintain the issues on his part joined produced as a witness D. DARBY THOMPSON, who testified as follows: That he has been in the building business for 33 years. He has built almost exclusively small residence houses containing from 4 to 9 rooms, two and three stories in height. He has built and superintended the construction of 200 or 300 houses in this city. He learned the trade of carpenter. He was engaged in that occupation before he became a real estate agent. He thinks a 9-inch party wall is sufficient for the kind of houses under consideration. He has built a great many of

that kind and never had any difficulty with them in any way
51 He has been in the fire insurance business about 12 years, and a member of the Board of Fire Under writers.

Q. State whether or not there is any difference in the insurance rates in this district between a dwelling house two stories in height where the wall is 9 inches thick, and one where it is 13 inches or more?

To which question the defendants objected and the Court sustained the objection, to which ruling the relator then and there excepted and the court noted the exception on its minutes.

On cross-examination the witness testified as follows: He has probably built 50 of these houses since he has been in the real estate business. It is cheaper to build houses with 9-inch party walls than with 13-inch walls. It is also more economical in point of space and for that reason preferable. He does not know that a 13-inch wall is better for fire. He has done considerable adjusting for insurance companies as well as being a member of the Board of Underwriters and helped to formulate their rules. He never has deemed a 14-inch wall any better than a 9-inch wall. Equally easy to keep a 9-inch wall plumb. He has built a great many houses with 9-inch walls, even three stories high, perfectly plumb and straight, and has built some 13-inch walls that are not perfectly plumb not, however because it was a 14-inch wall. Witness is giving his practical experience. Various things may cause a 9-inch wall to be out of plumb. Scaffolds may be put up carelessly. Green walls are easily moved.

Relator to further maintain the issues on his part joined produced as a witness ROBERT O'NEILL, who testified as follows: That
52 he is a carpenter and builder and has been since 1860. He learned the carpenter's trade. He worked at that until about 1872, when he went into the contracting business. Since 1872 he has been contracting here. He has built pretty much all small buildings, two stories of 4, 5 or 6 rooms, from 12½ feet in width up to 20 or 24. All the party walls that he built were 9 inches. He has no trouble about their safety. He never knew of any in those he built. He never knew anything about the 13-inch wall until the new regulation went into effect. He thinks such a wall is perfectly safe as to fire. He never heard it drawn in question by practical men.

To further maintain the issues on his part joined relator produced HENRY K. SIMPSON, who testified as follows: that he is secretary of the Peoples Fire Insurance Co. and a member of the Board of Fire Underwriters. They fix the rates on fire insurance policies and the different classes of risks. They make no difference in rates on account of difference in thickness of walls in dwelling house property.

On cross-examination witness stated that the Board of Fire Underwriters makes no difference in the rates on dwelling houses except where the material is of wood. The general classification of dwel

ing houses as to rates is into fire proof dwellings, those built of wood, and those built of brick.

Thereupon the relator rested.

The defendants in order to maintain the issues on their part joined produced as a witness JOHN P. HEALEY, who testified as follows:

That he is employed as an inspector for the District of Columbia. He is a computer in the building department and has been such for about five years. Prior to that time he was a bricklayer and builder for about 25 years. He has constructed houses similar in character to the one in question. He has had occasion since he was inspector to examine division walls of houses similar in kind to the one in question. 9-inch party walls have the disadvantage of being insufficient to properly support loads. They give insufficient protection against fire and during construction give insufficient protection against wind pressure. Where used in party walls the foot of the joists in abutting building acts as a conductor for fire from one building to another. Where the joists abut on a division wall it leaves a space of about an inch at most in the centre, which makes the wall insufficient for fire protection. He has found 9-inch party walls to be defective to such an extent that they could not be used in connection with any buildings that were to be constructed adjoining. Witness gave a number of instances where 9-inch walls which had come under his inspection had proved insufficient and unsafe. Where the partition wall is 9 inches thick the horizontal bond is broken. Staggering or alternating the joists would not make the construction any better, but rather worse, because instead of dividing it up into 16-inch panels it would divide it again. 16 inches on the centre is the average spacing between the joists in an ordinary building. If the joists do not come end to end on a partition wall the panels would be 8 inches apart. Where the joists meet end to end the construction is worse. During the construction of a building it is the general practice to lay the joists up on the top of the wall, placing them so as to handle them easier than laying down flat. They lay one joist down flat and pile the rest of the joists on top of it. The workmen travel from one wall to another on these joists, the effect of which is to pull the wall in. Where the joists are laid end to end in a 13-inch partition wall they are about 6 inches apart.

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On cross-examination witness stated that he was a practical mason for 25 years. He contracted for brick work, and presumes that he built 200 or 300 houses. Several were of the kind of the one in question. They all had 9-inch walls. He does not know of any of them falling down or burning up. He generally found difficulty in making a 9-inch wall in a two-story dwelling stand up. The wall is too thin and too light. It would stand up on a fair day. Prior to 1903 a house of this size would usually be built with a 9-inch party wall. Three-story houses of the height of 35 feet were generally built with 9-inch walls. This condition of things extends

back as far as the memory of the witness goes. A great many of these houses are still standing in the city and a great many people are living in them. He does not know positively of any two-story dwelling house properly built in which there was any trouble about the strength of the walls. He recollects one instance on 15th Street, Northeast, where the wall was too weak to resist a light wind during the construction of the house. This was corrected as far as possible by the builder. That is the only instance witness recollects. He knows of one instance where the fire communicated through the joists of a party wall. He was not present at the fire. His attention was called to it after the fire. He examined it
55 the next day on the complaint of the occupant. The house did not burn up. The fire in the case mentioned originated on the second floor. It originated in the flue and communicated the fire through the flue. It was communicated through the wall itself. He found the washboard and the washboard blocks charred with fire and for this reason thinks it came through the wall. He did not take the wall down to examine the joists. The joists were charred and he did not take them out of the wall. They were in the wall when he made the inspection. The fire communicated from one house to another at 103 E. Capitol Street. He examined the house since he was inspector. It was a three-story house with a cellar. It originated in the back flue in the party wall on the first floor. He was not at the fire. The fire originated through the wall. He saw the burnt washboard and burnt flooring. The houses did not burn up. A portion of the weatherboards burned. He did not examine the other house. The wall was a 9-inch wall. He could not say whether it would happen or not if it had been a 13-inch wall. He does not think a 9-inch wall in this kind of house is reasonably safe. He would not build such a house himself. If the chimney is built properly with only a straight flue it is a detriment to the wall. It is possible to build a chimney in such a house so that it will strengthen the wall. If it has a separate flue it had no effect on the wall one way or another. The flue is always joined to the brick work. A house with a 9-inch party wall is allowed outside of the fire limits. Where the joists are staggered there is same width of brick between the ends of joists as there would be if the wall were 13 inches and the joists placed end to end.

56 The defendants to further maintain the issues on their part joined produced as a witness LEON E. DESSEZ, who testified that he is an architect and has been so occupied since 1887. He has given the question of partition walls in the character of houses under consideration some investigation. A party wall of that kind is so thin that with the normal bearing of the joists from opposite sides it practically divides the wall in two, with a four inch bearing of the joist on one side, and a four inch bearing of the joist on the other, it practically butts the ends of the joists. In continued rows of houses where the plans are duplicated, these joists invariably come opposite each other. They are not staggered

hey do not come in between. If it is staggered, the conditions are ggravated; that is, it makes it worse, it destroys what little bond here is between. The usual spacing of joists, 16 inches on center, ermits the staggering of joists, but now, if you stagger the joists inches apart, you destroy what bond there is in the wall. There continuous hole there, and you never get that stopped up, in ractice. Then where the washboards come, the crowns for the locks, they are about 3 by 4 inches, and that destroys the thickness, nd you get 6 inches of wood in a 9-inch wall. That is where the oor levels of a row of adjoining houses are continuous. f the stories of the adjoining houses come a little above or below, ou still further break up your wall, and to my mind a 9-inch party all is objectionable in every respect. It cannot possibly be justied, there are so many objectionable features to it. The ordinary vibration of the hod-carriers carrying mortar is often sufficent to get a 9-inch wall out of the perpendicular. Such a wall might answer for a partition, but not for a party wall, r as a dividing wall between houses. In case of fire these walls sually collapse, those that witness has seen. Nine-inch dividing alls as a rule collapse in case of fire. There was a fire that occurred n Louisiana Avenue between 9th and 10th several years ago, nd these buildings had 9-inch party walls. The buildings were sed for warehouses. The dividing walls as a rule collapse. They ere so much out of plumb those that did remain that they had to ake them down. There were 13-inch party walls there which emained substantially intact. He built houses early in his practice milar to those in question. In recent years he has not superintended he construction of any such buildings. He could not say how many ouses of the kind under consideration he had superintended, posbly ten or more. Those that he superintended are still standing. one of them have taken fire that he knows of. He does not reall any instance where fire was communicated from one house to nother. He does not know of any such case. He does not conider a 9-inch party wall in houses of the kind described in the etition as reasonably safe for family use. My experience has been n building a new house adjoining an existing 9-inch party wall e have invariably encountered difficulty in making allowance or floor joists. If the floors do not strike at the new level or correspond with the other we would send bricks into the adjoining ouse. He thinks a 9-inch party wall is an improper wall to put up.

Q. And you say that it is improper for the reason that if it is an outside wall the wall is not liable to be strong enough to sustain a building on the side of it? A. I think if a party wants to build an independent wall two stories high, a -inch wall, it would be reasonably safe.

But not as a party wall. Built entirely on a man's own lot it is ntirely safe. Putting joists on a wall does not strengthen it, but ather weakens it.

Q. That is take a wall that was standing by itself, without any oists, if a row of joists were inserted between, the party walls would and up better in a heavy wind or gale? A. That is not my opinion.

Q. I understand you to say that the joists do not help t strengthen the wall at all? A. The joists do not help to strengthe a wall.

Q. What do you mean by that? A. If you design your wall a a party wall, that is one proposition. If you design a wall 30 or 4 feet high you must design it for a certain purpose, and any opening that you insert in that wall weaken that wall just to that extent.

You weaken a wall by staggering the joists. You destroy th horizontal bond of the wall. He would not say as to whether 9-inch wall properly built is a stronger wall than a 13-inch wal improperly built. He does not know. He does not think there i greater opportuntiy for doing poorer work in a 13-inch wall tha in a 9-inch wall. He was one of the persons appointed by the Com missioners to revise the present regulations.

On re-direct examination witness stated that he did not revise th clause relating to 13-inch party walls.

59 To further maintain the issues on their part joined th defendants produced as a witness JAMES L. PARSON, wh testified that he had been engaged in building for 30 years in th District of Columbia, and erected a good many buildings in the Dis trict. He does not think it good practice to build 9-inch party wall in any rows of houses, whether they are of two stories or more o less, because factors of safety and protection against conflagratio are not sufficient. There is not a sufficient factor of safety. Whil they may stand, and they have stood for a great many years, i cases of fire a long row of houses with 9-inch walls would collaps very much more quicker than thicker walls. Thereby you migh get a considerable conflagration. Where the joists are staggered yo get broken bricks or bats. There is not sufficient space to get regula bond, and that portion of the wall between the joists would be weake than other portions. Where the joists are placed end to end yo weaken the wall not quite so much, but you give much greate access for fire to be communicated. Flues starting from the foot ings would support the wall to some extent and would give it vertica support anyway. Flues starting on the first floor would no strengthen the wall, but would tend to weaken it.

On cross-examination witness said that he had built all kinds o houses and had built small houses. He has not built a great man of the kind in controversy, probably twenty during his whole ex perience. Most all of his work has been of higher grade. He ha built many houses in the southwest for the poor people or in th southeast for the poor people. None that he has built ha

60 fallen down. They are all standing yet. A chimney buil from the bottom of a wall strengthens it rather than weaken it. It forms a sort of buttress to it. He has never known any cas where a fire has originated in one house and spread to anothe through the joists, nor has seen such a condition. He has no hous of his own of 9-inch party walls. The house that he built for him self he built 13-inch party wall. He never built any other kind o a wall for himself. He has built them for other people. He do

not think a party wall of 9 inches has the same reasonable security hat is exercised generally in good building. When we use joists in floor or an iron beam, they are figured with the factor of safety o that it would require from four to six times the load to break it han can be put on it, that is the load to go on it. A 9-inch wall as ompared to a 13-inch wall has not that factor of safety, and if you hould have a fire that would consume one house in a row, there is liability that would extend very much further, by the collapse of hese thin walls, and communication through them, whereas if they vere substantial you would stop the fire in this particular house, r you would not have any more of your walls to tumble over. Now, vhile I do not know of any such happening here, it might happen ome time, and the additional expense of a 13-inch wall over a 9-inch vall is so small that it would be, in my opinion, very unadvisable to ermit 9-inch walls in rows of houses in this city. The difference in he cost of construction would not warrant it. The bricks cost one-hird more and the labor does no cost much more. You can lay nore bricks in a 13-inch wall than you can lay in a 9-inch wall, and you do not have to use props to hold them up, and braces 1 that you do have to look out for in a 9-inch wall, so there is not a great deal of difference in the cost of a 9-inch wall and a 3-inch wall. You can hear through them so easily. You can see hrough them easily. I know of one case where you could see hrough a 9-inch wall. It is not a wall that he built. That was the irst house that he lived in in Washington.

Witness on redirect examination said you can smell through them nore readily.

The defendants to further maintain the issues on their part joined roduced as a witness THOMAS HUGHES. He stated that he had een a bricklayer for 48 years; that he is president of the Master Bricklayers' Association of the District. A good 9-inch wall is a table and durable wall, but the majority of 9-inch walls as they re built in rows of houses today, no, by no means. They are built f salmon brick generally, and all the whole brick are put on one ide, and whatever broken bricks may happen to be left over would ll go on the other side of that wall. That makes the wall weight n one side. He thinks joists in a 9-inch wall is unsafer so far as re is concerned and the strength of the wall, too. The space be-ween the joists in cheap work where they are placed end to end is ever filled and the consequence is that fire can go from one joist to nother through that wall joint. If the wall is built with good whole brick on both sides and good mortar, it can be maintained lumb without any trouble, but if it is built with the whole brick on ne side and the broken on the other it has a tendency to bend to-wards the side where all the broken bricks are used.

On cross-examination the witness stated that a 9-inch party wall properly built in the kind of houses under consideration is 2 sufficient in point of strength for dwelling house purposes. The joists placed end to end and properly protected by slate something of that kind is safer than staggered joists. Neither

one is safe from fire. If there is a fire on one side neither is reasonably safe from having the fire communicated through those walls. Where the ends of the joists are placed opposite to each other on the party wall if properly constructed they would be filled up with something. It would depend altogether how hot the fire would be as to whether it would prevent the passage of fire. In the average case he does not think it would prevent fire from communicating. Has worked as foreman for people on three or four or five hundred of them in different parts of the country and in Great Britain. Very few here, probably 60 or 100, not over that, and probably less. Has usually worked on a better grade of house. None of the houses he has built with a 9-inch wall has fallen down, but they have buckled. This was occasioned by their going up too fast, pressure of wind when the walls were not propped, putting on joists too soon. Witness knows of only one instance where fire was communicated through the joists of an adjoining house. The building was not destroyed. The joists in this instance were opposite each other.

Thereupon to further maintain the issues on their part joined the defendant produced JOSEPH C. HORNBLOWER, who testified as follows: that he is a member of the firm of Hornblower & Marshall and was by profession an architect since 1876. He thinks that a 9-inch party wall is a most improper wall to build and that every 9-inch party wall is a menace to the whole city. It is quite possible, as has been shown from other testimony given here, for fire to be
63 communicated from one house to another.

On cross-examination the witness said that he has built some houses of the kind under consideration. He has built a number of small houses in different parts of the city. These were built for other people and were built about 20 years ago. These houses had 9-inch party walls in accordance with the regulations then in force. He has never known of there being any trouble with those houses either in point of strength or stability. He recollects no instance of fire originating in one house and communicating to another through the joists.

Thereupon the defendants to further maintain the issues on their part joined produced as a witness J. R. MARSHALL, who testified that he is a member of the firm of Hornblower & Marshall, and has been in practice with that firm since 1883. Witness does not believe in a 9-inch party wall at all. He thinks it is too thin and liable to get out of plumb in building and is not secure enough for fire. He has built houses of the character in controversy here, 15 or 20 years ago. Recently his work has been on larger size houses. He has superintended the construction of about 20 or 30 houses of the kind we have here. He never heard any complaint as to those houses. These houses are standing now. He has only seen one instance of a fire being communicated from one house to another through the joists of a partition wall. There was no serious damage done and he is uncertain of the location. Neither house was destroyed. The fire originated in the chimney.

64 On re-direct examination witness stated that a good deal of his time was taken in attempting to make as secure as possible the joinings between the joists and it required constant supervision and he was never quite sure that it was accomplished. Everywhere it is a very serious danger. Witness thinks it is almost inevitable that the fire should communicate in a 9-inch wall where the floors are on the same level, unless there is much more careful construction than is generally used. In case of general conflagration he thinks a 9-inch party wall would be all thrown down and that the chances of a 13-inch wall would be much greater than those of a 9-inch—provided they were both properly constructed.

On recross examination witness stated that by insertion of slate or a piece of tin and then backing it with mortar joists placed end to end would be comparatively safe. It is an improvement, but he does not think it then what it really should be. There is always a space between the top ends of the abutting joists in adjoining houses and the bottoms of the joists do not meet. He has tried to make a double break by putting a piece of tin at the end of each abutting joist and leaving an air space in between to get a double cellular construction. Whether such construction is safe depends upon how much fire there is. He does not believe in it for a party wall. Workmen have a greater chance of evading supervision in a 13-inch wall than in a 9-inch. They have greater opportunity of putting in bats and insufficient mortar.

The defendants to further maintain the issues on their part joined produced as a witness HENRY STOREY, who testified that he
65 was assistant inspector of buildings, and was by trade a bricklayer for about 20 years. He has found one or two cases in the District where 9-inch party walls were unsafe and were condemned. The 9-inch party walls between 628 and 630 Pa. Ave. were built of salmon brick and began to crush and collapse and had to be taken out and rebuilt. Another instance is a party wall between 1716 and 1718 11th Street. A portion of it was taken out and rebuilt. The wall was unfit for the purpose of a new building that was to go next door to it. A fire came through a party wall between houses 1012 and 1014 7th Street. The joists were abutted end to end. There was a fire on C Street between 9th and 10th and the 9-inch walls there collapsed entirely. Fire came through the party wall between the houses 1012 and 1014 7th Street. Fire also came through the 9-inch party wall between houses 429 and 431 M St., N. W. A similar case on T street. In this instance the fire had come through the wall. Witness does not think a 9-inch party wall is sufficient.

On cross-examination the witness stated that he followed the business of bricklayer for 20 or 25 years before he was inspector and worked on the same class of a house as we have here. He has helped to build about 150 of that kind of a house, in all sections from the time he started in business until about 6 or 8 years ago. They are all standing yet so far as witness knows. A 9-inch wall will sustain the weight without difficulty for an ordinary family for dwelling

house purposes. He lives in that kind of a house himself. The fire on M street originated from a defective flue. It passed
66 through the wall. It had a terra cotta lining but not at the point where the fire occurred. Neither of the houses burned up. Fire in the Yale street house had been put out when he arrived there. The fire originated in a defective flue. There were three houses in the row. The fire was in the middle house. Neither of them burned. The joists were all broken where they had been connecting their furnace and cutting out, they broke quite a number of joints in the brick. Fire would not have originated if the work had been properly done. The defect in the party wall between 1012 and 1014 7th St. was due to fault in construction when the house was erected. In these times it would not occur. The party wall between 628 and 630 had been built for some time. It was built of salmon brick and it had practically outlived its usefulness. It had begun to crush. Salmon brick are permitted to be used in a 13-inch wall. A good grade of salmon brick is permitted by the regulations. The building on La. Ave. having a 9-inch party wall which fell down was used as a warehouse or storeroom. The buildings were three stories in height.

On redirect examination the witness said that some of the walls in the La. Ave. buildings were 13 inches in thickness. Some of these did not fall down.

The defendants to further maintain the issues on their part joined produced as a witness SAMUEL J. PRESCOTT, who testified that he was a contractor and builder, engaged in building in Washington since 1890. He learned the carpenter's trade. He has erected from 10 to 20 a year since 1890. He does not consider a 9-inch party wall durable and does not consider it safe. He does not consider any two brick wall that is cut in any way to be safe.

67 On his cross-examination witness stated that he builds to sell and has built for other people. He builds various grades of houses. He has built 20 or 25 for himself that he has sold altogether. He does not know how many he has built altogether. He has built houses with 9-inch party walls. Most of the houses that he built for himself were with 13-inch walls before the regulations were changed requiring all party walls to be 13 inches. He never heard of any trouble in the houses that he erected with a 9-inch party wall. So far as he knows they are standing now. He knows of several cases in Washington where fire originated in one house and communicated through the wall to another. One was on La. Ave. and the other on 14th St. between P & Q Sts. The fire on La. Ave. occurred about a few months ago. There was a 9-inch party wall. One of the houses was practically destroyed. The other was damaged by the fire coming through the 9-inch wall and by the water coming through the 9-inch wall. He was not present at the fire. He knows it from personal examination. The buildings where the fire originated were used at the time as commission houses. Both of them were business places. He knows of a fire on 14th St. between P and Q originating in one house and followed through the

oists in a 9-inch party wall and damaged the adjoining property. He does not remember the number of the houses. Neither of the houses was consumed. It was a small fire. The fire originated from a defective flue on the first floor. He does not know how it originated. He did not take the wall down. The joists went through from one place to the other and I followed through the joists and you can see where it goes through that way. It will come through between the washboard and the plastering, and it will come up and smoke the wall above the washboard. He has seen that in other cities, but not in Washington because we have had no fires in small buildings here.

The defendants to further maintain the issues on their part joined produced as a witness P. W. NICHOLSON, who testified as follows: that he was the Fire Marshal of the District of Columbia and had been connected with the Fire Department 23 years. A 9-inch party wall in an ordinary dwelling house in a row of them is not safe. He has found fire traveled through them in several instances; First, because the walls were thin, and, second, because the cuts were made in the wall to insert the joists. The fire would travel through the joists on different occasions. A very hot fire will travel through a 9-inch party wall. He has known where the fire was in a portion of one building and was almost extinguished in that building, when it was discovered that it was burning on the other side of the wall. A 9-inch party wall will not resist the pressure that we have on our steamers here after a hot fire burning some time. He has seen where the joists were burnt right off entirely. His opinion is that a 9-inch party wall is not safe. He has no recollection of throwing down a 13-inch wall by water. He has found holes in all sorts of walls. The cases he has mentioned fire spread right through the walls where the joists were inserted in the walls. This is not owing to defective construction. He did not inspect the buildings before the fire. In the instances he has mentioned the party wall was perfectly good except where the joists came together and there it had come through, and in the other cases, where it was down southeast, the house did not burn up entirely. All the inside burnt out. The fire originated from a very hot stove.

Defendants to further maintain the issues on their part joined produced as a witness R. A. HAMILTON, who testified that he was computing manager of the Board of Fire Underwriters. He is chief officer of the Board of Fire Underwriters of the District. There is no difference in rates on dwelling houses whether the party wall is 13 inches or 9 inches in thickness. The standard for dwellings which the Board of Fire Underwriters tried to get was a 12-inch party wall. Their object was to prevent the spread of fire and destruction by water and collapse of building in case fire collapses joists. This is the only place that he knows of where they have a 9-inch party wall. The standard he has referred to calls for the United States and Canada. Since 1897 he has been in fire insurance business and the Board of Underwriters, and as deputy fire marshal.

On cross examination witness stated that he had never been deput fire marshal in this city. No companies are represented by th Board of Fire Underwriters. He fixes the rate on the standard fo the majority of the companies doing business in the District o Columbia. The bricks used here are about one-half inch large than those used elsewhere. A 12-inch wall in standard called fo by the company would be a 13-inch wall in the District of Columbi

The defendants to further maintain the issues on their part joine produced as a witness JOHN HENDERSON, JR. who testified that h has been with the Board of Underwriters of the District of Columbi as Chief Inspector for the past nine years. He examin
70 buildings for insurance writers and the character of the build ings. He is also inspector of buildings for damages occ sioned by fire for the purpose of making reports to the companie and informing himself on the subject. Witness has very little co fidence in a 9-inch party wall as a protection against fire. There a so many things in a 9-inch wall in connection with it which woul form an opportunity for a fire being transmitted from one buildin to another. If not on the story level where the joists meet and com almost end to end, at other places in the wall, and different plac throughout the building, for instance where wooden blocks a driven almost half way through to nail stair-cases to, and to na studding on. That leaves virtually only four inches between tha wood work and the wood work on the opposite side, and the defecti part of a 9-inch wall is where the headers are, where the headin crosses. Witness has been in many a heading where he could s right through the wall.

On cross-examination witness stated that he could see throug the wall before the houses were burnt. Ordinarily he can s through parts in a 9-inch wall any way that it is constructed. He employed in the office of the Board of Fire Underwriters. H is paid by the insurance companies. He has been a mechanic a his life.

On redirect examination witness stated that he learnt the carpe ter's trade and was in business, that is working for other people tha himself, for nearly 30 years. He has been with the insurance com panies for 9 years. He built quite a number of buildings himsel

To further maintain the issues on their part joined th
71 defendants offered in evidence the record made by the *Com missions* at the time the present regulation regarding part walls was adopted for the purposes of showing that they acted in th matter on their judgment formed after due deliberation, to the ad mission of which record the relator objected, but the Court overrule said objection and permitted the record to be offered in evidenc to which the relator then and there excepted, and the Court entere said exception upon its minutes. Said record tended to show tha the Commissioners had a hearing to which a number of citizens o the District interested in building were present and some eviden was taken pro and con touching the advisability of such a regulatio

The above was all of the evidence taken in the case.

Thereupon the relator moved the Court for the issuance of a peremptory writ of mandamus against the defendants in accordance with the prayer of relator's petition, which motion the Court refused to grant, but on the contrary refused to issue the writ of mandamus and dismissed relator's petition, to which ruling of the Court plaintiff then and there excepted and the Court noted said exception in its minutes.

Inasmuch as said matters are not fully of record and the Court on motion of plaintiff's attorney wishes them to be made of record, signs this bill of exceptions this 7th day of August, A. D. 1906, now for then.

JOB BARNARD, *Justice.*

Memorandum.

September 26, 1906.—Time to file record in Court of Appeals further extended to November 1st, 1906.

Order to Clerk for Preparation of Transcript.

Filed September 26, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48203.

UNITED STATES *ex Relatione* THOMAS E. SMITHSON
vs.
SNOWDEN ASHFORD ET AL.

The Clerk in making up the record on appeal in this case, will please include the following:—

1. Petition of relator, and Exhibit marked No. 5.
2. The following note:—

There was filed with the petition, the plans of the houses mentioned therein, marked "Exhibits Nos. 1, 2, 3 and 4."

3. Rule to show cause, issued December 28, 1905.
4. Answer of respondents to same, filed January 30, 1906.
5. Relator's motion to strike out part of said answer, filed February 26, 1906.
6. Order of Court overruling said motion to strike out, passed March 23, 1906.
7. Joinder in issue, filed March 31, 1906.
8. Order of Court discharging rule, passed June 8, 1906.
9. Noting of appeal and fixing bond, June 8, 1906.
10. Opinion of Court, filed June 11, 1906.
11. Relator's bond on appeal approved and filed, June 13, 1906.
12. Bill of exceptions submitted June 13, 1906; and note signing and filing August 7, 1906.

13. Time to file transcript extended to October 1, 1906, on July 19th, 1906.

14. Time to file transcript extended to November 1, 1906, on September 26, 1906.

B. F. LEIGHTON,
Attorney for Relator. W. Hill.

Service of designation waived.

E. H. THOMAS,
For Respondents.

Sept. 26, 1906.

74 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 73, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed a copy of which is made part of this transcript, in cause No. 48,203 at Law, wherein United States *ex relatione* Thomas E. Smithson, is plaintiff, and Snowden Ashford, *et al.* are defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 17″ day of October, A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1736. U. S. of A. *ex rel.* Thomas E. Smithson, appellant, *vs.* Snowden Ashford *et al.* Court of Appeals, District of Columbia. Filed Oct. 25, 1906. Henry W. Hodges, clerk.